

August 25, 2023

VIA ECF

Honorable Ona T. Wang, U.S.M.J.
United States District Court
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street, Courtroom 20D
New York, New York 10007

Re: *Ashour, et al. v. Arizona Beverages USA LLC, et al.*
Case No. 1:19-cv-07081-AT-OTW
Dear Judge Wang:

Pursuant to the Court's order (ECF No. 186), we write to provide a status report.

Plaintiffs' Submission

Plaintiff Crystal Townes' Interrogatories to Defendants

Defendants served Amended Objections and Responses to Plaintiff Crystal Townes' Second Set of Interrogatories to Defendants on July 7, 2023. Instead of providing written Responses, as is the typical practice, Defendants referred Plaintiffs to over eighty documents that purported to provide the requested information. Plaintiffs are in the process of analyzing the referenced documents to ascertain whether the Responses are complete. By way of example, Interrogatory No. 1 asked Defendants to identify the source of the water supply used to make the Products. While it appears that some of the documents identify the water source for a given co-packer (co-packers are facilities/entities that Defendants hire to make the Products), the Interrogatory Response does not confirm that the identified documents provide said information for all the co-packers that make the Products. In addition, Interrogatories No. 2 and No. 3 ask Defendants to identify the pH levels of the water supply(ies) identified in Interrogatory No. 1 during several stages of the Products' manufacturing process. It does not appear that this information is provided in the identified documents.

The parties engaged in a meet and confer on August 3, 2023 to discuss Defendants' responses to the above-referenced Interrogatories. During that meet and confer, Defendants requested that Plaintiffs provide a written explanation as to why they believe that Defendants' Responses are deficient. Plaintiffs have been working on said explanation and plan to provide it to Defendants by early next week.

Plaintiffs' Requests for Admission to Defendants

Plaintiffs served Requests for Admissions on Defendants on July 19, 2023. Following a meet and confer with Defendants on August 9, Plaintiffs pared back their Requests for Admissions to Defendants by almost half and served the revised Requests on August 11. The parties have agreed that Defendants have an extension until September 22, 2023 to respond.

Depositions

The Parties are in the process of scheduling the depositions of five fact witnesses of Defendants to take place in September through early October. Thus far, the parties have scheduled the following depositions:

- Mike Kutner – September 25, 2023
- Dean Angel – September 26, 2023

Plaintiffs have requested that Defendants confirm substantial completion of document production will, in fact, take place by September 15 per this Court's order. *See* Dkt. No. 258. Defendants have yet to make such confirmation. Thus, the depositions have been set with the expectation of substantial completion per the Court's order, including custodial file productions for the witnesses. Defendants have represented they will provide dates for the remaining three witnesses promptly.

As to the Rule 30(b)(6) deposition, the Parties agree that Topics 7, 12, 13, 14, 15, 29 are not in dispute. The Parties are actively engaged in a meet and confer with regard to the remaining topics (1, 2, 4, 5, 6, 9, 10, 17-22, 24 and 25). Specifically, Plaintiffs are working to provide a written explanation of their reasonable expectation as to the preparation of witnesses as to these topics, which the Parties will use for a telephonic meet and confer on August 29. Given the impending discovery deadline, Plaintiffs believe it is necessary to schedule the 30(b)(6) depositions with the expectation that the Parties will reach agreement as to the scope of preparation for all Topics. If the Parties are unable to reach a resolution by September 15, Plaintiffs believe it will be necessary to seek Court intervention in order to complete discovery by the discovery deadline.

Third-Party Subpoenas

The Parties have received a significant document production from Allen Flavors and a minor production from Knouse Foods. All documents received by Plaintiffs from the third parties have been served upon Defendants.

Plaintiffs are continuing to coordinate with the remaining third parties regarding additional document productions through mid-September. Following receipt and analysis of the document productions, Plaintiffs will determine whether additional depositions of the third parties will be necessary.

The deposition of Allen Flavors took place on August 10.

Defendants' Supplemental Document Production

We received confirmation from Defense counsel that they are in the process of reviewing the remaining ESI documents for production and intend to make a substantial production by September 15.

Following our review of Defendants' substantially completed document production, we will initiate a meet and confer if necessary.

Defendants' Submission

Plaintiff Crystal Townes' Interrogatories to Defendants

These interrogatories required responding to, *inter alia*, multiple questions about water sources for dozens of co-packers (in one question alone). Other interrogatories sought multiple responses about water activity calculations, pH levels, Brix readings at Titratable Acidity calculations for several products made in multiple instances, by different co-packers, throughout the United States, since May 14, 2015. These interrogatories far exceed the allowable number, are unduly overbroad and responses to same are more practically obtained through documents produced and/or depositions consistent with Local Rules. Contrary to Plaintiffs' assertions, subject to the objections interposed, the responses furnished included written responses along with identifying documents from which responses to the interrogatories may be derived consistent with Rule 33. Defendants will meet and confer again if necessary but reserve all rights.

Plaintiffs' Requests for Admission to Defendants

Plaintiffs emailed amended request for admissions on August 11, 2023, with the effective service date being August 14, 2023. The requests total 86 in number. Reserving all objections, the parties have agreed that Defendants have an extension until September 22, 2023 to respond. Defendants reserve the right to seek further extensions if necessary.

30 (b)(6) Depositions

During the meet and confer process, the parties have exchanged emails concerning the 30(b)(6) dispute. Some of these issues were raised during the May 2, 2023 hearing and the parties were encouraged to try to work out the dispute so that Defendants can prepare their witnesses. During the meet and confer process, Defendants have stated their main concerns/objections which are that most, if not all, of the disputed topics do not overlap with the undisputed ones and are so overbroad that witness preparation is not possible. Defendants have identified those disputed topics as topics numbered 1, 2, 4, 5, 6, 9, 10, 15, 17-22, 24 and 25 ("Disputed Topics"), contained in the Amended 30(b)(6) Notice dated February 27, 2023. Topics 7, 12, 13, 14, 15, and 29 in that notice are not disputed.

Defendants' Supplemental Document Production

Defendants have advised Plaintiffs that, by next week, they expect to be able to confirm that substantial completion of document production can occur by the September 15, 2023 deadline. If, for some unforeseen reason, that cannot occur, we will promptly notify Plaintiffs and the Court.

Thank you for Your Honor's attention to this matter.

Respectfully Submitted,

PEARSON WARSHAW, LLP

/s/ *Melissa S. Weiner*

MELISSA S. WIENER

REESE LLP

CARLOS F. RAMIREZ

Attorneys for Plaintiffs

STEVENS & LEE

/s/ *Robert P. Donovan*

ROBERT P. DONOVAN

Attorneys for Defendants